

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

THE UNIVERSITY OF UTAH,

Plaintiff,

v.

MAX-PLANCK-GESELLSCHAFT zur  
FORDERUNG der WISSENSCHAFTEN  
e.V., a corporation organized under the  
laws of Germany; MAX-PLANCK-  
INNOVATION GmbH, a corporation  
organized under the laws of Germany;  
WHITEHEAD INSTITUTE FOR  
BIOMEDICAL RESEARCH, a Delaware  
corporation; MASSACHUSETTS  
INSTITUTE OF TECHNOLOGY, a  
Massachusetts corporation; ALNYLAM  
PHARMACEUTICALS INC., a Delaware  
corporation; and ROBERT L. CARET,  
President of the University of  
Massachusetts in his official capacity;  
JAMES R. JULIAN, Executive Vice  
President and Chief Operating Officer of  
the University of Massachusetts, in his  
official capacity; CHRISTINE W. WILDA,  
Senior Vice President for Administration,  
Finance & Technology and University  
Treasurer of the University of  
Massachusetts, in her official capacity; and  
JAMES P. MCNAMARA, Executive  
Director, Office of Technology  
Management of the University of  
Massachusetts, in his official capacity, their  
predecessors and successors in office,  
Defendants.

Civil Action No. 1:11-cv-10484

**ASSENTED-TO MOTION FOR LEAVE TO FILE REPLY  
IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL  
HARD COPY DOCUMENTS IN THE CUSTODY OF BRENDA BASS**

Defendants Max-Planck-Gesellschaft zur Förderung der Wissenschaften; Max-Planck-Innovation, GmbH; Whitehead Institute for Biomedical Research; Massachusetts Institute of Technology; Alnylam Pharmaceuticals, Inc.; Robert L. Caret, President of the University of Massachusetts in his official capacity; James R. Julian, Executive Vice President and Chief Operating Officer of the University of Massachusetts, in his official capacity; Christine M. Wilda, Senior Vice President for Administration & Finance and University Treasurer of the University of Massachusetts, in her official capacity; and James P. McNamara, Executive Director, Office of Technology Management of the University of Massachusetts, in his official capacity (collectively, “Defendants”) respectively move, pursuant to Local Rule 7.1(b)(3), for leave to file a reply brief in further support of their Motion to Compel Hard Copy Documents in the Custody of Brenda Bass (“Motion to Compel”) (Dkt. No. 134).

Defendants filed the above-referenced Motion to Compel (Dkt. No. 134) on December 9, 2014. Plaintiff University of Utah (“UUtah”) filed its Opposition to Defendants’ Motion to Compel (Dkt. No. 139) on December 23, 2014.

As grounds for this motion for leave, Defendants believe that the proposed reply will assist the Court in resolving the Motion to Compel. Among other things, the reply addresses the arguments UUtah makes in its Opposition that Defendants are seeking documents that are not responsive to Defendants’ discovery requests, and that the documents Defendants did request are not relevant to the issues in the case. As discussed in the proposed reply, publicly available documents, examples of which are referenced in the reply, indicate that the hard copy documents in Dr. Bass’s custody are highly likely to contain documents that are responsive to Defendants’ discovery requests and that are relevant and bear upon, or that reasonably could lead to other matters that could bear upon, information that refutes Dr. Bass’s inventorship claims and that supports Defendants’ affirmative defenses in the case. As further discussed in the proposed reply, the controlling case law, as cited in the reply, requires evidence of a purported inventor’s experimentation—whether before or after the filing date of the patent—as part of the inquiry into

the purported inventor's claim of inventorship in the science of complex chemical compounds such as those at issue in the instant dispute.

No oral argument has been scheduled, such that there is no prejudice to UUtah if Defendants file a reply. Moreover, *UUtah assents to the relief sought by this motion.*

Accordingly, Defendants respectfully request that the Court permit them to file their proposed reply, which is attached hereto as **Exhibit 1**, and Declaration of Sandra L. Haberny, and accompanying exhibits, in support of the proposed reply, which are attached hereto as **Exhibit 2**.

Respectfully submitted,

Max-Planck-Gesellschaft zur Förderung der  
Wissenschaften e.V.; Max-Planck-Innovation  
GmbH; Whitehead Institute for Biomedical  
Research; Massachusetts Institute of  
Technology; and Alnylam Pharmaceuticals,  
Inc.

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By their attorneys,

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Dated: December 30, 2014

**CERTIFICATE PURSUANT TO LOCAL RULE 7.1(a)(2)**

I, Thomas F. Maffei, hereby certify that counsel conferred and attempted in good faith to resolve or narrow the issues raised herein. As indicated above, plaintiff UUtah assents to this motion pursuant to the parties' standing agreements dated July 13, 2012 and December 9, 2014.

/s/ Thomas F. Maffei

Thomas F. Maffei

**CERTIFICATE OF SERVICE**

I, Thomas F. Maffei, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on December 30, 2014.

/s/ Thomas F. Maffei

Thomas F. Maffei